

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.898 OF 1997
IN
CHAMBER SUMMONS NO.854 OF 1992
IN
SUMMARY SUIT NO.3204 OF 1991

M/s.Reynolds Engineering
Corporation, a partnership
firm registered under the
Indian Partnership Act having
its principal place of business
at Dhannur Building, 4th
floor, Sir Phirozshah Mehta.

Appellants
(original plaintiffs)

vs.

M/s.Power Max (India).
a firm having its office at
No.28, New Boag Road, T.Nagar,
Madras 600 017.

Respondents
(original defendants)

Mr.R.M.Parekh for the appellants.

Mr.Farhan Dubash i/b.M/s.Federal & Rashmikant for the
respondent.

**CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.**

DATED : 10th January 2006

ORAL JUDGMENT (Per R.M.Lodha,J.).

At the outset Mr.R.M.Parekh, the learned counsel
for the appellants prayed for adjournment. However, we
find no justification to accede to his request. His
request for adjournment is overruled.

2. The original plaintiffs are in appeal aggrieved by
the order dated August 1, 1994 passed by the learned

Chamber Judge whereby the leave granted to the plaintiffs under Clause XII of the Letters Patent to sue the defendants has been revoked.

3. The plaintiffs filed a summary suit against the defendants for recovery of sum of Rs.5,14,978.56 (Rupees five lacs fourteen thousand nine hundred seventy eight and fifty six paise) with future interest on the principal amount of Rs.3,91,866.80 (Rupees three lacs ninety one thousand eight hundred sixty six and eight paise) at the rate of 21% per annum or at such other rate as may be found proper by the Court. The plaintiffs averred that the defendants placed purchase order dated 17th April 1989 with the plaintiffs for the purchase of oil coolers. The said order was accepted by the plaintiffs on the terms and conditions set out in the acceptance order dated 22nd April 1989. Pursuant to the said order of the defendants, the plaintiffs sold, supplied and delivered the goods comprises of oil coolers as per the invoice issued by the plaintiffs. The said goods were delivered to the defendants at Madras by motor transport. Value of the goods received by the plaintiffs as per the invoices was Rs.3,91,866.80 (Rupees three lacs ninety one thousand eight hundred sixty six and eight paise). The defendants failed and neglected to make payment of the goods received by them necessitating the Suit by the plaintiffs. According to

the plaintiffs, the orders were placed in Bombay and same were accepted in Bombay; the price was payable in Bombay and cause of action accrued in Bombay, but as the defendants carry on business at Madras outside the jurisdiction of this Court, leave under clause XII of the Letters Patent became necessary and accordingly they sought leave under clause XII.

4. On 26th July 1991 the leave under clause XII of the Letters Patent to institute the Suit against the defendants was granted by this Court.

5. On 5th August 1992 the defendants took out chamber summons for revocation of the leave granted under clause XII of the Letters Patent. According to the defendants no part of cause of action accrued in Bombay and, therefore, leave could not have been granted under clause XII of the Letters Patent. The defendants sought for revocation of grant of leave. Though reply affidavit was filed by the plaintiffs in opposition to the chamber summons, at the time of hearing of the chamber summons none appeared for the plaintiffs. The learned Chamber Judge heard the arguments of the defendants' advocate and by the impugned order dated 1st August 1994 revoked the leave. Hence the appeal.

6. Though the defendants in the affidavit in support of

chamber summons set up the case that no part of cause of action accrued within the jurisdiction of Bombay, the documents annexed with the plaint speak otherwise. It is true that the defendants carry on business at Madras and that they placed orders for supply of oil coolers at Madras Branch of the plaintiffs. However, from the acceptance of order (Exhibit B at page 25), it is clear that the purchase order placed by the defendants was accepted at Bombay. In other words, the contract was concluded at Bombay and, therefore, by no stretch of imagination can it be said that no part of cause of action accrued at Bombay. Besides that there is clear endorsement in all the nine invoices that the contract is subject to Bombay jurisdiction. We fail to understand how could in the background of these facts and circumstances, the learned Chamber Judge held that this Court has no jurisdiction at all to entertain and try the Suit. The purchase order was accepted in Bombay and the defendants agreed that the Courts in Bombay shall have the jurisdiction as is clear from the various invoices. In view thereof, surely this Court has jurisdiction. As a matter of fact, the necessity of obtaining the leave under clause XII arose as the defendants were carrying on business in Madras. This is clear from the averments made in paragraph 9 of the plaint which reads thus:

"9. The plaintiffs say that the orders were placed in Bombay and the same were accepted in Bombay. The price was payable in Bombay and that the entire cause of action has arisen in Bombay within the jurisdiction of this Hon'ble Court. The plaintiffs further say that the defendants had agreed that the Courts in Bombay shall have jurisdiction to decide the disputes between the parties. This Hon'ble Court therefore has jurisdiction to entertain try and decide the above suit. The defendants are however carrying on their business at Madras outside the jurisdiction of this Hon'ble Court and hence the plaintiffs have filed a petition for necessary leave be granted to the plaintiffs under clause XII of the Letters Patent to file this suit in this Hon'ble Court."

7. There is absolutely no merit in the submission of the defendants that no part of cause of action has accrued within the jurisdiction of this Court. For what we have already indicated above, it is clear that part of cause of action had accrued within the jurisdiction of this Court and that the defendants had agreed that the Courts in Bombay shall have the jurisdiction. In this backdrop the finding of the learned Chamber Judge that this Court has no jurisdiction has to be set aside.

8. As the part of the cause of action had accrued within the jurisdiction of this Court and the defendants have been carrying on business outside the jurisdiction, the leave deserved to be granted under clause XII of the

Letters Patent and such leave having been granted there was no justification to revoke the same.

9. We, accordingly, allow the appeal and set aside the order dated 1st August 1994. The Chamber Summons taken out by the defendants for revocation of leave granted to the plaintiffs under clause XII of the Letters Patent is dismissed and the leave granted to the plaintiffs under clause XII on 26th July 1991 is restored.

. No costs.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)